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Docket No. 06029 USA
(MHM Docket No. 13182US01)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION OF:

Ronald M. Pearlstein
John G. Langan
Dao-Hong Zheng
John Irven and
Benjamin L. Hertzler

SERIAL NO.: 09/641,933

FILED: August 18, 2000

FOR: Sub-Atmospheric Gas Delivery
Method and Apparatus

EXAMINER: Walton, G.L.

GROUP ART UNIT: 3753

CERTIFICATE OF
EXPRESS MAILING

I hereby certify that this correspondence is being deposited with United States Postal Service on July 17, 2002, in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231 utilizing the "Express Mail Post Office to Addressee" service of the United States Postal Service under Mailing Label No. EL640153683US.

Herbert D. Hart III
Reg. No. 30,063
Attorney for Applicant(s)

**PETITION TO EXPUNGE UNINTENTIONALLY
SUBMITTED CONFIDENTIAL INFORMATION UNDER 37 C.F.R. § 1.59(b)**

Assistant Commissioner for Patents
Washington, D.C. 20231

RECEIVED

JUL 24 2002

TECHNOLOGY CENTER R3700

Dear Sir:

The Applicants, on behalf of the assignee, Air Products and Chemicals, Inc. ("Air Products"), hereby timely petition the Commissioner, under 37 C.F.R. § 1.59(b), to expunge and return to the Applicants a two-page e-mail message containing confidential information that was inadvertently photocopied and unintentionally submitted with Applicants' initial Information Disclosure Statement (PTO-1449) filed on August 18, 2000

(referred to as the "Initial IDS"). A check drawn in the amount of the petition fee of \$130.00, as set forth in 37 C.F.R. § 1.17(h), is included with this petition.

Identification of The Confidential E-Mail Document

The Applicants petition the Commissioner to expunge and return a two-page e-mail message (referred to herein as "the Confidential E-mail"). The Confidential E-mail was inadvertently photocopied and unintentionally submitted with the Initial IDS.

Specifically, the Confidential E-mail is dated August 18, 2000, is prominently identified with the notice "Privileged and Confidential Communication" and was the only e-mail-type document submitted with the Initial IDS. Applicants believe that the Confidential E-mail was inadvertently submitted to the Office attached to, or as the document following, foreign patent document EP 0916891 A3.

Circumstances Supporting The Expunging And Return Of The Confidential E-mail

Applicants submit that the expunging and the return of the Confidential E-mail is appropriate in light of the following circumstances. See 37 C.F.R. § 1.59(b); § 724.05 MANUAL OF PATENT EXAMINING PROCEDURE, 8th Ed. (August 2001).

The above-identified application is presently pending and not abandoned. No notice of allowance or *Ex Parte Quayle* action has issued. Consequently, the Office can

effect the expunging and return of the Confidential E-mail prior to the issuance of any patent on the pending application.

Air Products adheres to a custom and practice of maintaining in confidence documents identified with the notice "Privileged and Confidential Communication". The Confidential E-Mail is a document identified with the notice "Privileged and Confidential Communication". Air Products has not otherwise made the Confidential E-mail public.

The Confidential E-mail contains no discussion relating to any patents and/or printed publications that might constitute prior art to the inventions disclosed and claimed in the present application. The subject matter discussed in the Confidential E-mail is non-technical in nature. Hence, the Confidential E-mail could not be material or important, under 37 C.F.R. § 1.56, to the determination of patentability of the inventions claimed by Applicants.

The public availability of the Confidential E-mail, if not expunged and returned, would cause irreparable injury to Air Products. Air Products commits to retain, on its and Applicants' behalf, the Confidential E-mail for the period during which any patent that issues from the pending application remains in force.

In light of the above circumstances, Applicants, on behalf of the assignee Air Products, request that the Confidential E-mail be expunged from the file wrapper of the pending application and returned to the Applicants.

The Examiner is invited to contact the Applicants' undersigned attorney at (312) 775-8000 if any unresolved matters remain.

If any fees in addition to the \$130.00 fee submitted herewith are required, the Commissioner is authorized to charge any deficiency or credit any excess portion to Deposit Account No. 13-0017.

Respectfully submitted,



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Reg. No. 30,063
Attorney for Applicants

Date: 16 JULY 2002

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